

BOIES SCHILLER FLEXNER LLP  
RICHARD J. POCKER (NV Bar No. 3568)  
300 South Fourth Street, Suite 800  
Las Vegas, NV 89101  
Telephone: (702) 382-7300  
Facsimile: (702) 382-2755  
rpocker@bsfllp.com

BOIES SCHILLER FLEXNER LLP  
WILLIAM ISAACSON (*pro hac vice*)  
KAREN DUNN (*pro hac vice*)  
1401 New York Avenue, NW, 11th Floor  
Washington, DC 20015  
Telephone: (202) 237-2727  
Facsimile: (202) 237-6131  
wisaacson@bsfllp.com  
kdunn@bsfllp.com

BOIES SCHILLER FLEXNER LLP  
STEVEN C. HOLTZMAN (*pro hac vice*)  
BEKO O. REBLITZ-RICHARDSON (*pro hac vice*)  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
Telephone: (510) 874-1000  
Facsimile: (510) 874-1460  
sholtzman@bsfllp.com  
brichardson@bsfllp.com

Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle America, Inc., and  
Oracle International Corp.

MORGAN, LEWIS & BOCKIUS LLP  
THOMAS S. HIXSON (*pro hac vice*)  
JOHN A. POLITO (*pro hac vice*)  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Telephone: 415.442.1000  
Facsimile: 415.442.1001  
thomas.hixson@morganlewis.com  
john.polito@morganlewis.com

DORIAN DALEY (*pro hac vice*)  
DEBORAH K. MILLER (*pro hac vice*)  
JAMES C. MAROULIS (*pro hac vice*)  
ORACLE CORPORATION  
500 Oracle Parkway, M/S 5op7  
Redwood City, CA 94070  
Telephone: 650.506.4846  
Facsimile: 650.506.7114  
dorian.daley@oracle.com  
deborah.miller@oracle.com  
jim.maroulis@oracle.com

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;  
ORACLE AMERICA, INC., a Delaware  
corporation; and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-VCF

**ORACLE'S RENEWED  
MOTION FOR ATTORNEYS'  
FEES**

PUBLIC REDACTED VERSION

**TABLE OF CONTENTS**

	<b>Page</b>
I. INTRODUCTION .....	1
II. STATEMENT OF FACTS .....	3
A. Throughout This Litigation, Rimini Lied About and Concealed Its Conduct .....	3
1. Rimini’s Misrepresentations About Cross-use.....	3
2. Rimini’s False Statements About Its Use of Siebel and JD Edwards Environments Prevented Resolution of Liability at Summary Judgment .....	4
3. Rimini’s Spoliation of Evidence .....	5
4. Rimini Repeatedly Failed to Provide Complete and Accurate Discovery .....	6
5. Rimini Disregarded Court Orders and Continually Raised Arguments the Court Had Rejected .....	6
B. Despite Rimini’s Conduct Throughout This Litigation, Oracle Prevailed on Its Copyright Claims and Rimini’s Copyright Defenses and Counterclaims .....	7
C. Rimini’s History of Infringement and Its Reckless Business Strategy and Wasteful Litigation Tactics Continue .....	8
III. DISCUSSION .....	10
A. Oracle Is the Prevailing Party on Its Copyright Claims .....	10
B. The Relevant Factors Strongly Favor Awarding Attorneys’ Fees to Oracle .....	10
1. Oracle Was Successful on Each of Its 93 Copyright Claims Against Rimini .....	11
2. Rimini’s Objectively Unreasonable Litigation Tactics Made It Very Expensive for Oracle to Prevail .....	11
3. Oracle Should Be Made Whole .....	13
4. Rimini’s Gambles with the Law Must Be Deterred.....	13
5. Innovation Should Be Incentivized.....	14
C. Fees for Claims Related to the Core Copyright Claims Are Recoverable .....	15
D. The Court’s Prior Fees Award of \$28.5 Million Was Reasonable and Should Be Reinstated .....	16
1. The Rates Actually Paid by Oracle Were Reasonable Hourly Rates .....	17
2. The Amount of Time Billed on This Case Was Reasonable .....	21
IV. CONCLUSION .....	22

**TABLE OF AUTHORITIES****Page(s)****Cases**

<i>Arbor Hill Concerned Citizens Neighborhood Ass’n v. County of Albany &amp; Albany Cnty. Bd. of Elections,</i> 522 F.3d 182 (2d Cir. 2008).....	19
<i>Ballen v. City of Redmond,</i> 466 F.3d 736 (9th Cir. 2006).....	17
<i>Camacho v. Bridgeport Fin., Inc.,</i> 523 F.3d 973 (9th Cir. 2008).....	19
<i>Casella v. Morris,</i> 820 F.2d 362 (11th Cir. 1987).....	11
<i>Counts v. Meriwether,</i> 2:14-cv-00396-SVW-CW, 2016 WL 1165888 (C.D. Cal. Mar. 9, 2016).....	15
<i>Dice Corp. v. Bold Techs. Ltd.,</i> No. 11-CV-13578, 2014 WL 2763618 (E.D. Mich. June 18, 2014).....	15
<i>Dillard v. City of Greensboro,</i> 213 F.3d 1347 (11th Cir. 2000).....	18
<i>Ferland v. Conrad Credit Corp.,</i> 224 F.3d 1145 (9th Cir. 2001).....	17
<i>Fogerty v. Fantasy, Inc.,</i> 510 U.S. 517 (1994).....	13, 14
<i>Foster v. Kings Park Cent. Sch. Dist.,</i> 174 F.R.D. 19 (E.D.N.Y. 1997) .....	15, 16
<i>Gonzalez v. City of Maywood,</i> 729 F.3d 1196 (9th Cir. 2013).....	16, 17, 21
<i>IO Grp., Inc. v. Jordan,</i> No. C 09-0884 MEJ, 2010 WL 2231793 (N.D. Cal. June 1, 2010).....	13
<i>Jackson v. Axton,</i> 25 F.3d 884 (9th Cir. 1994).....	10, 11
<i>Kirtsaeng v. John Wiley &amp; Sons, Inc.,</i> 136 S. Ct. 1979 (2016) .....	<i>passim</i>

1	<i>Kourtis v. Cameron,</i>	
2	358 Fed.App'x. 863 (9th Cir. 2009).....	18
3	<i>Louisville Black Police Officers Org., Inc. v. City of Louisville,</i>	
4	700 F.2d 268 (6th Cir. 1983).....	19
5	<i>Magnuson v. Video Yesteryear,</i>	
6	85 F.3d 1424 (9th Cir. 1996).....	14
7	<i>Marsu, B.V. v. Walt Disney Co.,</i>	
8	185 F.3d 932 (9th Cir. 1999).....	15
9	<i>Minow v. Lexus,</i>	
10	No. CV 06-7496 CAS, 2008 WL 11338145 (C.D. Cal. Aug. 15, 2008) .....	15
11	<i>Moore v. James H. Matthews &amp; Co.,</i>	
12	682 F.2d 830 (9th Cir. 1982).....	18
13	<i>National Assoc. of Concerned Veterans v. Secretary of Def.,</i>	
14	675 F.2d 1319 (D.C.Cir.1982) .....	18
15	<i>Pacquiao v. Mayweather,</i>	
16	2012 WL 4092684 (D. Nev. 2012) .....	18
17	<i>Perfect 10, Inc. v. Giganews, Inc.,</i>	
18	No. 11-07098, 2015 WL 1746484 (C.D. Cal. Mar. 25, 2015).....	17, 20, 21
19	<i>Prison Legal News v. Schwarzenegger,</i>	
20	608 F.3d 446 (9th Cir. 2010).....	17
21	<i>Resurrection Bay Conservation All. v. City of Seward Alaska,</i>	
22	640 F. 3d 1087 (9th Cir. 2011).....	17
23	<i>Rubbermaid Commercial Products, LLC v. Trust Commercial Products,</i>	
24	No. 2:13-cv-02144, 2014 WL 4987878 (D. Nev. Aug. 22, 2014).....	20, 21
25	<i>Sega Enterprises Ltd. v. MAPHIA,</i>	
26	948 F. Supp. 923 (N.D. Cal. 1996) .....	12
27	<i>Symantec Corp. v. Logical Plus, Inc.,</i>	
28	No. C 06-7963 SI, 2010 WL 2330388 (N.D. Cal. June 4, 2010).....	15
	<i>The Traditional Cat Ass'n, Inc. v. Gilbreath,</i>	
	340 F.3d 829 (9th Cir. 2003).....	15
	<i>Twentieth Century Fox Film Corp. v. Entm't Distrib.,</i>	
	429 F.3d 869 (9th Cir. 2005).....	15
	<i>Webb v. Sloan,</i>	
	330 F.3d 1158 (9th Cir. 2003).....	15

**Statutes**

17 U.S.C. § 505 ..... 1, 10, 15, 18

**NOTICE OF MOTION AND MOTION**

Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation (together, “Oracle”) will and hereby do move for an award of attorneys’ fees against Defendant Rimini Street, Inc. (“Rimini”). This motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities incorporated herein; the supporting Declaration of Zachary Hill filed concurrently with this motion; the previously filed papers and declarations supporting Oracle’s November 13, 2015 Motion for Attorneys’ Fees and Costs, including ECF Nos. 921, 922, 923, 924, 925, 931, 933, 934, 937, 939, 952, 969, 972, 973, 996, 1017, 1020, 1023, 1024, 1025, 1027, 1033, 1046, and 1049; documents incorporated by reference; the entire record in this action; matters appropriate for judicial notice; and any evidence or argument presented on reply or at the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Following the jury’s 2015 verdict for Oracle on each of Oracle’s 93 copyright infringement claims and award of damages on Oracle’s copyright infringement and state computer access claims, the Court granted Oracle’s motions for attorneys’ fees and costs, prejudgment interest, and an injunction. Rimini appealed. The Ninth Circuit affirmed the Court’s judgment with respect to all the copyright infringement claims, reversed with respect to the state computer access claims and remanded for reconsideration the award of \$28,502,246.40 in attorneys’ fees. Oracle now renews its motion for attorneys’ fees and requests that the Court award Oracle the amount it awarded in the original fees order on the same grounds the Court previously identified.

With the jury verdict on all Oracle’s copyright infringement claims affirmed, Oracle remains the prevailing party, and the Court has discretion to award attorneys’ fees under 17 U.S.C. § 505 based on a five-factor test: (1) Oracle’s degree of success, (2) the objective unreasonableness of Rimini’s litigation conduct, (3) the need to make Oracle whole, (4) the need to deter Rimini’s continuing infringement, and (5) the need to further the aims of the copyright

1 laws by incentivizing innovators to protect their intellectual property. ECF No. 1049 at 13. The  
2 Ninth Circuit’s decision does not alter this Court’s prior analysis on any of these five factors.

3 On the copyright claims, Oracle’s degree of success remains unchanged. Oracle won  
4 each of the 93 copyright claims, and won on Rimini’s affirmative defense of copyright misuse.  
5 The jury awarded a \$35.6 million verdict for copyright infringement, and the Court awarded  
6 \$22.5 million in pre-judgment interest on the infringement judgment, both challenged and  
7 affirmed on appeal, along with an additional \$16.2 million in costs. The Ninth Circuit’s reversal  
8 on Oracle’s state computer access claims does not affect Oracle’s degree of success on its  
9 copyright claims.

10 The Ninth Circuit’s remand also has no effect on the other factors that the Court already  
11 found in Oracle’s favor, including Rimini’s objectively unreasonable litigation conduct “based  
12 on a clear misreading of Oracle’s software licensing agreements and a conscious disregard for  
13 the manner that Rimini used and housed Oracle’s copyrighted software programs on its own  
14 servers” (ECF No. 1049 at 15); the need to make Oracle whole and further the aims of the  
15 Copyright Act by compensating Oracle for the “significant amount of resources in legal fees and  
16 costs over what was eventually awarded in damages just to stop [Rimini’s] unlawful conduct”  
17 and to protect the software “Oracle has spent decades developing” (*id.* at 16:10-13); and the need  
18 to deter Rimini “from its pattern of infringing Oracle’s copyrights” (*id.* at 16).

19 The Ninth Circuit’s remand appears to focus on whether the quantum of attorneys’ fees  
20 awarded should remain unchanged after reversal of the California computer fraud claim. The  
21 award should remain unchanged because, as this Court found, this case “was a copyright  
22 infringement case first and foremost, regardless of all other claims pled.” ECF No. 1049 at 14.  
23 Further, Oracle may recover any attorneys’ fees incurred in litigating claims involving the same  
24 “common core of facts” and “related legal theories” at issue in Oracle’s copyright claims.  
25 Rimini’s “access” of Oracle’s computer systems was just one method by which Rimini copied  
26 Oracle software and infringed Oracle’s copyrights, and therefore, fees incurred litigating  
27 Oracle’s computer access claims are recoverable.  
28

1 Finally, the Court's prior award was reasonable and well within its discretion. The Court  
 2 already found that, with a 20% blanket fee reduction, Oracle's attorneys' rates and time billed  
 3 were reasonable, and the Ninth Circuit's opinion did not alter that finding. Therefore, based on  
 4 the same evidence that the Court has already considered and the same reasoning the Court has  
 5 already adopted, Oracle respectfully requests that the Court grant Oracle's request for attorneys'  
 6 fees and reinstate the \$28,502,246.40 previously awarded.

## 7 **II. STATEMENT OF FACTS**

### 8 **A. Throughout This Litigation, Rimini Lied About and Concealed Its Conduct**

9 Oracle filed suit against Rimini in January of 2010, and Rimini forced Oracle to incur  
 10 unnecessary expenses from the beginning of discovery all the way to trial.

#### 11 **1. Rimini's Misrepresentations About Cross-use**

12 From the beginning, Rimini made false statements to Oracle, the Court, and the public  
 13 regarding Rimini's core support processes. After being held in contempt by this Court for failure  
 14 to appear at deposition, Seth Ravin, Rimini's founder and CEO, appeared at deposition in 2010  
 15 and testified that Rimini's [REDACTED]

16 [REDACTED] ECF No. 923, Ex. 21 (Ravin 7/21/10  
 17 Dep.) at 321:17-23. He also testified that Rimini [REDACTED]  
 18 [REDACTED] *Id.* at 307:4-12; *see also id.* at 307:13-308:13, 306:3-13. He  
 19 testified that [REDACTED]

20 [REDACTED]  
 21 [REDACTED] *Id.* at 303:9-23; *see also* Trial Transcript ("Tr.") at 804:20-  
 22 805:5 (Ravin). He said that Rimini's [REDACTED]

23 [REDACTED] ECF No. 923, Ex. 21 (Ravin 7/21/10 Dep.) at 325:20-326:9. Rimini's Rule  
 24 30(b)(6) designee, Senior Vice President Brian Slepko, provided similar testimony, asserting that  
 25 "all the development is done for a particular customer in that customer's environment using that  
 26 customer's files" and "that work [is] repeated for each customer for whom that work is  
 27 applicable," meaning that "development is done for – on a particular customer's environment  
 28 and then one at a time across customers." Tr. at 3173:17–3175:3.



1 Rimini repeated these lies to the Court. In its June 16, 2011 answer to Oracle's  
 2 complaint, Rimini claimed that "each client is assigned a separate data 'silo' where Oracle  
 3 Software and Support Materials for only that client are maintained." ECF No. 153, ¶ 4; *see also*  
 4 ECF No. 136 at 11-12; ECF No. 523, ¶¶ 37-50, 82-90. Rimini similarly repeated these lies to its  
 5 customers and the market. *E.g.*, Tr. 319:10-14, 453:20- 454:10, 471:24-472:4, 547:23-548:1  
 6 (Ravin); 1396:10-14, 1398:2-5, 1398:20- 1399:7, 1406:10-1407:13, 1434:21-24 (Maddock);  
 7 PTX 241, 5352; *see also* Tr. 1412:6-10 & 1414:9-12 (Maddock) (admitting that Rimini had no  
 8 legitimate basis for its falsehoods).

9 Rimini knew its statements were false, and Oracle had to spend a considerable amount of  
 10 time and resources on discovery and expert analysis to prove it. ECF No. 923 ¶ 17; ECF No.  
 11 924 ¶ 11; *see also* ECF No. 136 at 9:15-10:19. In its February 13, 2014, ruling holding that  
 12 Rimini had infringed Oracle's copyrights, the Court exposed this deceit, finding that one  
 13 customer's "development environments were used to develop and test software updates for the  
 14 City of Flint and other Rimini customers with similar software licenses." ECF No. 474 at 11.  
 15 Only after Oracle presented the evidence and expert testimony that it had amassed did Rimini  
 16 finally admit to its wrongdoing. It was not until trial that Ravin finally admitted that cross-use  
 17 occurred "all the time." Tr. 799:6-12, 803:10-12 (Ravin). Ravin also finally admitted that the  
 18 significant evidence of unauthorized copying that Oracle had discovered and Oracle's expert had  
 19 analyzed "looked pretty accurate." Tr. 551:10-15 (Ravin).

## 20 2. Rimini's False Statements About Its Use of Siebel and JD Edwards 21 Environments Prevented Resolution of Liability at Summary Judgment

22 Rimini's false claims about its conduct were not limited to cross-use. In response to  
 23 Oracle's motion for summary judgment, Rimini made numerous false statements about its use of  
 24 Oracle's JD Edwards and Siebel software. For example, Rimini claimed that "Siebel and J.D.  
 25 Edwards environments maintained by Rimini are not open for development use," "Rimini did not  
 26 use Siebel or J.D. Edwards environments to develop, test, or package updates," "Rimini's JDE  
 27 support professionals generally do not use the local JDE environments for development, and  
 28 these environments are rarely accessed," and "Rimini's maintenance of environments on behalf

1 of its J.D. Edwards customers was for archival purposes.” ECF No. 269, Rimini Responses to  
 2 Oracle’s Statement of Facts, Fact Nos. 56, 76 & Rimini Facts 41, 46.

3 The Court denied summary judgment as to the infringement of Siebel and JD Edwards  
 4 software only because Rimini’s false statements led the Court to find disputed issues of material  
 5 fact (ECF No. 474 at 22-24 & n.20), forcing Oracle to go to trial to prove liability. It was only at  
 6 trial—five and a half years after Oracle filed suit—that Rimini finally admitted the truth. *E.g.*,  
 7 Tr. 303:1-5 (Ravin) (Rimini “used all of the software,” including all its “Siebel software” and  
 8 “JDE software” in its “work for customers.”); 364:3-6 (Ravin) (environments on Rimini’s  
 9 systems were “used in order to support customers”—that was their “full design and purpose”);  
 10 318:19-22, 364:7-9 (Ravin) (Siebel environments were designed at the outset for, among other  
 11 uses, “testing and development” and “troubleshooting”); Tr. 1146:5-25 (Chiu) (Siebel copies  
 12 “used to provide support”); Tr. 758:23-759:4 (Ravin) (same); Tr. 1754:8-15 (Whittenbarger)  
 13 (Siebel copies used for training); Tr. 367:2-8 (Ravin) (J.D. Edwards environments were for  
 14 “testing and development” and for “diagnostics and support”); *see also* ECF No. 865 (detailing  
 15 JD Edwards and Siebel evidence).

16 Rimini’s litigation conduct was extraordinarily wasteful in addition to being unethical.  
 17 Rimini fabricated disputed issues of material fact on summary judgment, only to have its CEO  
 18 admit infringement at trial three years – and millions of dollars – later.

### 19 **3. Rimini’s Spoliation of Evidence**

20 Rimini also ignored its preservation obligations and destroyed evidence. Rimini  
 21 destroyed a key computer directory containing Oracle software that Rimini used for multiple  
 22 customers in violation of the customer licenses. Magistrate Judge Leen found that Rimini  
 23 intentionally deleted this “software library” well after Rimini was on notice of potential litigation  
 24 and aware that the co-mingled software library was potentially relevant evidence. ECF No. 466  
 25 at 17:15-17.

26 Judge Leen sanctioned Rimini for destroying this evidence. *Id.* at 18:17-23. Given  
 27 Rimini’s prior false assurances that the Oracle software library never existed, Judge Leen  
 28 “underst[ood] Oracle’s reservations about the veracity” of Rimini’s representations. *Id.* at 18:2.

1 Rimini's actions not only forced Oracle to bring a spoliation motion, but they were also part of a  
 2 pattern of conduct that caused Oracle's attorneys and technical consultants to spend significantly  
 3 more time in discovery than should have been necessary to prove Oracle's infringement case.  
 4 ECF No. 923 ¶ 17 (explaining how Oracle had to search for and analyze anecdotal evidence of  
 5 how Rimini used its unlawful software library because records of the library were not available);  
 6 ECF No. 924 ¶ 11 (same).

#### 7 **4. Rimini Repeatedly Failed to Provide Complete and Accurate** 8 **Discovery**

9 One of the key pieces of evidence throughout the litigation was Rimini's response to  
 10 Oracle's Interrogatories 20-22. These responses detailed the copies of PeopleSoft, JD Edwards,  
 11 and Siebel software stored and used on Rimini's local servers (referred to as "local  
 12 environments" at trial). This information was readily accessible to Rimini, since it created the  
 13 local environments and used them on a daily basis. Nevertheless, Rimini produced five  
 14 iterations of those responses over the course of discovery. ECF No. 923 ¶ 18. But Rimini did  
 15 not produce each new iteration of its own will. Rather, upon receiving each new version of  
 16 Rimini's list of local environments, Oracle had to investigate the list for completeness by  
 17 exhaustively reviewing documents and analyzing data sources. Oracle then had to draft meet  
 18 and confer letters detailing gaps in Rimini's iterative lists and requesting supplemental  
 19 information. *See id.*, Exs. 10-12 (letters to Rimini identifying inadequacies in discovery  
 20 response).

#### 21 **5. Rimini Disregarded Court Orders and Continually** 22 **Raised Arguments the Court Had Rejected**

23 Rimini's tactics and unreasonableness extended to ignoring Court orders. For example,  
 24 despite dismissal of its copyright misuse counterclaim in 2010, ECF No. 111, Rimini continued  
 25 to argue the claim at trial (and continued to argue it after trial), creating additional and  
 26 unnecessary work for Oracle. ECF No. 741 (Rimini Trial Brief) at 3 n.2, 15-18; ECF No. 906  
 27 (Rimini Opp. to Oracle Motion for Permanent Inj.) at 16-18. Rimini also reasserted defenses  
 28 that it had affirmatively waived, at and even after trial. ECF No. 771 (Oracle's Opposition to  
 Rimini's Objections to Jury Instructions) at 6 ("Rimini requests that authorization under 17

U.S.C. § 117(a) be included in the explanation of a copyright holder's rights proposed at P-4 and P-11. Rimini Obj. 7-8. Rimini had already waived any defense under that statute. ECF No. 401 (Amended Stipulation re Copyright Registrations and Copies), ¶¶ 13-14."); ECF No. 907 at 17.

**B. Despite Rimini's Conduct Throughout This Litigation, Oracle Prevailed on Its Copyright Claims and Rimini's Copyright Defenses and Counterclaims**

Despite years of Rimini lies and concealment, Oracle discovered the truth and prevailed against Rimini on Oracle's 93 copyright claims, including every product line at issue: PeopleSoft, JD Edwards, Siebel, and Database. ECF No. 896 (Verdict); ECF No. 474 (Order on MSJ #1); ECF No. 476 (Order on MSJ #2). While Rimini's damages expert opined that Oracle suffered damages of no more than \$10 million (Tr. 2706:14-2707:5 (Hampton), 3584:24-3587:20, 3604:7-12 (Rimini closing)), the jury awarded Oracle \$35.6 million in damages for Rimini's infringement. ECF No. 896 (Verdict). This Court also awarded an injunction to Oracle to prevent further infringement by Rimini (ECF No. 1049 at 22), which was stayed by the Ninth Circuit pending appeal, and Oracle now seeks to reinstate the copyright infringement portion of the injunction on grounds unaffected by the Ninth Circuit's opinion. The Court also awarded substantial prejudgment interest and taxable and non-taxable costs, which the Ninth Circuit largely affirmed, including an additional \$22.5 million in prejudgment interest, \$12.8 million in taxable costs, and \$3.4 million in non-taxable costs. *Oracle USA, Inc.*, 879 F.3d at 965-66; *see also id.* at 964 ("It is true that prejudgment interest is an element of compensation, not a penalty") (quotation marks and citation omitted).

Oracle successfully moved to dismiss Rimini's counterclaims for copyright misuse and unfair competition (ECF No. 111), and Oracle defeated Rimini's counterclaim for defamation and Rimini's affirmative defenses of express license, consent to use, and implied license on summary judgment (ECF No. 474). Oracle either dropped before verdict or failed to prevail on the following claims, either at trial or on appeal: state and federal computer access claims, trespass to chattels claim, breach of contract, inducing breach of contract, intentional interference, unfair competition, unjust enrichment, and accounting claims.

All of these claims—successful or unsuccessful—centered around Oracle's copyright

1 infringement claims. The misuse of copyright claim and affirmative defense and Rimini's other  
 2 affirmative defenses to Oracle's copyright infringement claims are obviously closely intertwined  
 3 with Oracle's infringement claim. Rimini's defamation and unfair competition claims were  
 4 based on Oracle's statements about Rimini's massive theft of Oracle's intellectual property.  
 5 Based on its own summary judgment ruling, the Court found that Oracle's statements were true,  
 6 and thus Rimini's claims failed. ECF No. 476 at 29-30.

7 The allegations in Oracle's complaint and trial testimony show that Oracle's computer  
 8 access claims and tort claims always shared a core of facts intertwined with its copyright claims.  
 9 Rimini's accessing of Oracle's software files (the subject of the computer access claims (*see*  
 10 ECF No. 146 (2d. Am. Compl.) ¶¶ 84-110, 146-51) necessarily included copying those files (the  
 11 subject of the copyright claims (*see id.*, ¶¶ 71-83)). Accessing and copying the files were  
 12 governed by Oracle's Terms of Use. *Id.* ¶¶ 71-110. Oracle's expert analysis of Rimini's access  
 13 to Oracle's files overlapped with his analysis of Rimini's copying of those files. *See* Tr. 1150:4-  
 14 7 (C. Hicks) ("Generally what we were doing was we were looking at Rimini Street's acquisition  
 15 of Oracle materials, looking at how those materials were acquired and stored, and what impact, if  
 16 any, it had on Oracle Systems."). Similarly, Oracle's breach of contract and inducing breach of  
 17 contract claims relate to the same access to Oracle's copyrighted files at issue in the other claims.  
 18 ECF No. 146 (2d. Am. Compl.) ¶¶ 112, 117. Oracle also based its intentional interference and  
 19 related state law claims on lies Rimini told its customers about its conduct with respect to  
 20 Oracle's software, including its copying of and access to those files. *Id.* ¶¶ 125, 133, 156.

21 Therefore, all of Oracle's work on litigating its claims and Rimini's counterclaims and  
 22 defenses overlapped significantly with Oracle's work litigating its copyright claims.

### 23 C. Rimini's History of Infringement and Its Reckless Business 24 Strategy and Wasteful Litigation Tactics Continue

25 Rimini Street is the second incarnation of a business model that its CEO, Seth Ravin,  
 26 originally started with a company called TomorrowNow. TomorrowNow pled guilty to  
 27 copyright infringement in a criminal case and paid hundreds of millions of dollars to Oracle in a  
 28 civil infringement case resulting from conduct that was central to the support model that Mr.

1 Ravin created. Tr. 410:15-411:12 (Ravin). Ravin testified in the TomorrowNow case that  
 2 during his time at TomorrowNow, he knew it was common for TomorrowNow to have Oracle  
 3 software on its systems and that it was standard for TomorrowNow to use those local  
 4 environments to develop fixes and updates. ECF No. 923, Ex. 20 (Ravin 5/21/2009 Dep.) at  
 5 35:17-37:12; 41:13-18, 110:2-111:15. Those infringing local copies were part of the reason  
 6 TomorrowNow stipulated to both civil and criminal liability for copyright infringement. *Id.*, Ex.  
 7 23 (*Oracle USA, Inc. v. SAP AG*, N.D. Cal. Case No. 07-CV-1658 (May 21, 2009), ECF No.  
 8 911), ¶¶ 15-16 (fact stipulation stating that, e.g., “TN made at least 6,189 Copies. Each such  
 9 copy constituted an infringement . . . .”); ECF No. 923, Ex. 25 at 2-5 (TN criminal plea stating  
 10 that, e.g., “TOMORROWNOW employees made at least 6,189 “environment” copies of Oracle’s  
 11 PeopleSoft software”). Indeed, this litigation against Mr. Ravin—along with Rimini’s wasteful  
 12 litigation practices—was born out of the TomorrowNow litigation. Oracle subpoenaed Mr.  
 13 Ravin and Rimini as third parties during discovery in that earlier lawsuit in light of SAP’s likely  
 14 argument that Rimini was a noninfringing alternative, but Mr. Ravin and Rimini refused to  
 15 comply, presumably so they could avoid or delay discovery of their unlawful conduct for as long  
 16 as possible. ECF No. 923, Ex. 24 (*Oracle USA, Inc. v. SAP AG*, No. 2:09-CV-01591 (ECF No.  
 17 49)). As noted above, only after this Court held Mr. Ravin and Rimini in contempt for this  
 18 attempt to evade discovery and conceal evidence of their misconduct, did Mr. Ravin appear for  
 19 deposition. *Id.* at 2. Rimini’s practice of attempting to delay and avoid discovery of the truth  
 20 about its support practices set the stage for how Rimini litigated the present case.

21 Rimini has repeatedly told the press and the Court that it changed its support practices  
 22 after the Court’s February 2014 Summary Judgment Order and that its new support model is  
 23 non-infringing. Oracle and Rimini are engaged in continued litigation regarding Rimini’s post-  
 24 2011 conduct, including this “new” support process (“*Rimini II*”). ECF No. 669. However,  
 25 Rimini’s public 10-K SEC filing from March 15, 2018 tells a different story. Rimini admits that  
 26 “[t]he injunction originally ordered by the District Court, which was vacated and remanded by  
 27 the Court of Appeals, would have required that we incur additional expense in the range of 1% to  
 28 2% of net revenue for additional labor costs to provide support for our clients as contracted.”

Hill Decl., Ex. A at 15. In other words, it continues to use its old process, which violates Oracle's copyrights and this Court's original injunction.

In a further indication that its ongoing processes are unlawful, Rimini disclosed that on March 2, 2018, it "received a subpoena directing [Rimini] to produce to a federal grand jury certain communications and documents relating to the Company's support for certain software systems and certain related operational practices." *Id.* at 17; *see also Rimini Street, Inc. v. Oracle Int'l Corp.* ("Rimini II"), 14-1699 (D. Nev.), ECF No. 703-1 (Grand Jury Subpoena).

Unless it awards Oracle's attorneys' fees in this case, the Court will encourage Rimini to engage in the same duplicitous and wasteful discovery and litigation tactics again in *Rimini II* while continuing its infringing conduct.

### **III. DISCUSSION**

As the prevailing party on all its copyright claims, Oracle should be awarded the same attorneys' fees the Court previously awarded based on the same facts and reasoning that justified the Court's original award. *See* ECF No. 1049.

#### **A. Oracle Is the Prevailing Party on Its Copyright Claims**

Oracle prevailed against Rimini on each of Oracle's 93 copyright claims and won over \$74 million in damages, interest, and costs. *See* § II.B, above. Therefore, the Court has discretion to award attorneys' fees pursuant to the Copyright Act. *See* 17 U.S.C. § 505 ("In any civil action under this title, the court in its discretion may allow the recovery of full costs by or against any party . . . . [T]he court may also award a reasonable attorney's fee to the prevailing party as part of the costs.").

#### **B. The Relevant Factors Strongly Favor Awarding Attorneys' Fees to Oracle**

To determine whether an award of attorneys' fees is warranted under the Copyright Act, courts examine five factors: (1) the degree of success of the prevailing party; (2) the objective reasonableness of the losing party's arguments during litigation; (3) the need to make the prevailing party whole; (4) deterrence; and (5) the purposes of the Copyright Act. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1079, 1986 (2016); *Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994) (stating the five factor test for attorneys' fees under the Copyright Act). Further,



the Copyright Act does not condition an award of fees on a finding of willful infringement. *Casella v. Morris*, 820 F.2d 362, 366 (11th Cir. 1987) (“[A] showing of bad faith or frivolity is not a requirement of a grant of fees.”); ECF No. 1049 at 13:12-19. The Court previously determined these factors are in Oracle’s favor. *Id.* at 13-17. Regarding Oracle’s copyright claims, the Ninth Circuit’s decision does not alter any part of the analysis on these five factors.

**1. Oracle Was Successful on Each of Its 93 Copyright Claims Against Rimini**

Oracle was completely successful on each of its 93 copyright infringement claims, and Oracle’s total damages award including prejudgment interest and costs exceeded \$74 million, more than seven times the damages number presented at trial by defendants’ damages expert. *See* § II.B, above. The Ninth Circuit affirmed every aspect of this copyright verdict and award. This high degree of success weighs heavily in favor of awarding attorneys’ fees.

**2. Rimini’s Objectively Unreasonable Litigation Tactics Made It Very Expensive for Oracle to Prevail**

The Court considered the “objective reasonableness” factor in its original order and found it to weigh in Oracle’s favor. ECF No. 1049 at 14:19-16:2. The facts and arguments supporting the Court’s reasoning have not changed. The use of objectively unreasonable factual and legal arguments by the non-prevailing party in copyright litigation favors an award of attorneys’ fees to the prevailing party. *Jackson*, 25 F.3d at 890. Further, “a court may order fee-shifting because of a party’s litigation misconduct, whatever the reasonableness of his claims or defenses.” *Kirtsaeng*, 136 S.Ct. at 1988-89.

As discussed above in § II.A, the five-year history of this case is replete with examples of Rimini’s litigation misconduct and Rimini taking factual and legal positions that were objectively false and forcing Oracle to spend time and resources on unnecessary discovery, fact investigations, and motion practice. The Court found:

[Rimini’s] litigation position that it did not engage in copyright infringement was not an objectively reasonable position. Rather, it was based on a clear misreading of Oracle’s software licensing agreements and a conscious disregard for the manner that Rimini used and housed Oracle’s copyrighted software programs on its own servers. In fact, Rimini’s position was so unreasonable that



the court was able, at summary judgment, to determine that Rimini engaged in massive copyright infringement of Oracle's copyrighted works, thereby leaving only a few issues for trial. However, throughout this litigation, including right up until trial, Rimini contended that no copyright infringement ever occurred because it did not use the copyrighted software in a proscribed manner.

ECF No. 1049 at 15 (Court's order re attorneys' fees).

Rimini's litigation conduct was further unreasonable due to:

Rimini's repeated instances of copyright infringement and its significant litigation misconduct in this action. It is undisputed that defendants ignored their preservation obligations and destroyed evidence prior to trial, including a key computer directory containing Oracle software that Rimini used for multiple customers in violation of customer licenses. In fact, Magistrate Judge Leen found that defendants intentionally deleted the software library well after they were on notice of potential litigation and were well aware that the software library was potentially relevant evidence. As a result of their litigation misconduct, defendants were forced to acknowledge the spoliation and destruction of evidence at trial, and the [C]ourt even gave an adverse inference jury instruction about the issue.

*Id.* The Ninth Circuit acknowledged the Court's "understandable frustration with Rimini's litigation conduct." *Oracle USA, Inc.*, 879 F.3d at 964.

The case was complex already, simply based on the factual and legal issues involved.<sup>1</sup> But Rimini's litigation tactics made it significantly more complicated, ultimately forcing Oracle to spend thousands of attorney hours and tens of millions of dollars to prove its case, including dozens of depositions, scores of fact investigations, hundreds of meet and confer letters and emails, and significant efforts to prove issues at trial that should have been resolved long before. ECF No. 923 ¶ 17. As before, the Court should award Oracle attorneys' fees to compensate it for these unnecessary costs it was forced to incur in protecting its intellectual property. *See Sega Enterprises Ltd. v. MAPHIA*, 948 F. Supp. 923, 940 (N.D. Cal. 1996) (awarding attorneys' fees

<sup>1</sup> For its part, Rimini hired no fewer than six law firms and numerous attorneys working at national law firms throughout the country for this case, including Gibson Dunn & Crutcher (attorneys in Los Angeles, San Francisco, and Washington D.C.), Shook, Hardy & Bacon LLP (San Francisco, Houston, and Kansas City), Lewis Roca Rothgerber Christie LLP (Las Vegas), Greenberg Traurig, LLP (Las Vegas), Harrison Kemp & Jones (Las Vegas), and Howard & Howard Attorneys PLLC (Las Vegas). ECF No. 1024, Ex. C.

1 to prevailing plaintiff in a copyright case, citing “weak” arguments raised by defendant in  
 2 defense); *IO Grp., Inc. v. Jordan*, No. C 09-0884 MEJ, 2010 WL 2231793, at \*2-3 (N.D. Cal.  
 3 June 1, 2010) (awarding attorneys’ fees to prevailing plaintiff in a copyright case, citing  
 4 “inherent contradictions in Defendant’s factual statements”). This factor weighs heavily in  
 5 Oracle’s favor.

### 6 **3. Oracle Should Be Made Whole**

7 The Court considered the need to make Oracle whole in its prior order: “Oracle has spent  
 8 decades developing its copyrighted software only to have [Rimini] take that hard work and use it  
 9 to their benefit at Oracle’s expense. In order to prosecute this action, Oracle was compelled to  
 10 spend a significant amount of resources in legal fees and costs over what was eventually awarded  
 11 in damages just to stop [Rimini’s] unlawful conduct. Without a fee award, the court finds that  
 12 Oracle’s investment in its intellectual property and its incentive to create future software would  
 13 not be appropriately protected or compensated.” ECF No. 1049 at 16:10-15. The facts and  
 14 arguments supporting this reasoning have not changed, and the Court should again require  
 15 Rimini to compensate Oracle for its fees incurred protecting Oracle’s intellectual property in  
 16 order to make Oracle whole.

### 17 **4. Rimini’s Gambles with the Law Must Be Deterred**

18 As the Court already found, “an award of attorneys’ fees is appropriate to deter defendant  
 19 Rimini from its pattern of infringing Oracle’s copyrights, which started when the business began  
 20 and continued until the middle of this litigation. Further, an award of fees is necessary to deter  
 21 other third party service providers from engaging in similar infringing conduct in order to  
 22 compete with Oracle for software support services.” ECF No. 1049 at 16:19-23.

23 Attorneys’ fees are appropriate to deter future infringement. *Fogerty v. Fantasy, Inc.*,  
 24 510 U.S. 517, 534-35 n.19 (1994). A court may award fees “to deter repeated instances of  
 25 copyright infringement . . . even if the losing position was reasonable in a particular case.”  
 26 *Kirtsaeng*, 136 S.Ct. at 1989. This factor is particularly important in this case because Rimini  
 27 and many of its executives have been involved in infringing Oracle’s copyrights before and are  
 28 already engaged in litigation to determine whether they continue to do so. A pattern has

1 emerged in which Rimini's current CEO Seth Ravin sets up companies that infringe Oracle's  
 2 copyrights, those companies litigate for years (while denying the infringement and making  
 3 money from Oracle licensees), the conduct is deemed infringing after that expensive litigation,  
 4 and Mr. Ravin then begins the cycle once more.

5 This started with Mr. Ravin's first company, TomorrowNow, which employed a similar,  
 6 infringing support model. *See* § II.C, above. It continued when Mr. Ravin set up his next  
 7 infringing support company, Rimini. *Id.* And it continues to this day, as evidenced by Rimini's  
 8 own 10-K filing and the federal grand jury subpoena it received. *Id.*

9 Rather than running a business that respects intellectual property and the law, Rimini cuts  
 10 corners and rushes to the market with, at best, the *hope* that a court or jury will not find it liable  
 11 for its actions.<sup>2</sup> In the meantime, Rimini's infringement allows it to dramatically cut costs and  
 12 offer 50% off support to customers, which helps Rimini quickly earn the revenue necessary to  
 13 fund the inevitable litigation. This behavior must be deterred, and an award of attorneys' fees to  
 14 Oracle as the prevailing party in this litigation will aid in that deterrence. *See Magnuson v.*  
 15 *Video Yesteryear*, 85 F.3d 1424, 1432 (9th Cir. 1996) (remanding based on lower court's failure  
 16 to consider *Fogerty* factors and expressing concern that the "award for damages in this case is  
 17 insufficient to deter future copyright infringements such as the one at issue here").

## 18 5. Innovation Should Be Incentivized

19 As the Court has already found, "awarding attorneys' fees in this action furthers the  
 20 purposes of the Copyright Act as it rewards owners of intellectual property, like Oracle, for  
 21 pursuing their rights under the act and 'encouraging and rewarding authors' creations." ECF No.  
 22 1049 at 17:3-5 (quoting *Kirtsaeng*, 136 S. Ct. at 1986). The consequence of Rimini's recidivist  
 23 infringement is that it costs Oracle a lot of money to litigate. Oracle prevailed in this litigation  
 24 and recovered over \$74 million, which is a substantial sum. However, litigation is expensive,  
 25 and this case cost tens of millions of dollars in attorneys' fees to litigate successfully. Without

26 <sup>2</sup> One article published in February 2015 suggests that Mr. Ravin chose to make Las Vegas,  
 27 Nevada the headquarters for Rimini "partly because the state's pool of jurors knows little about  
 28 the technology industry." Hill Decl., Ex. B  
[\(https://www.theregister.co.uk/2015/02/27/to\\_beat\\_oracle\\_in\\_court\\_or\\_commerce\\_start\\_outside\\_california/\)](https://www.theregister.co.uk/2015/02/27/to_beat_oracle_in_court_or_commerce_start_outside_california/).

the ability to recover attorneys’ fees, it would be impossible for Oracle and other innovators to protect their intellectual property and be made whole. The failure to award attorneys’ fees to successful plaintiffs acts as a *disincentive* to enforce intellectual property rights. And the lack of a financially viable means of enforcing intellectual property rights creates a further *disincentive* to create intellectual property in the first place.

### C. Fees for Claims Related to the Core Copyright Claims Are Recoverable

Even though the Ninth Circuit reversed on Oracle’s computer access claims, all of Oracle’s fees in the litigation are recoverable. Under § 505, where the copyright claim and other claims or counterclaims involve a “common core of facts” or “related legal theories,” the Court may award attorneys’ fees on all related claims, including unsuccessful claims. *Webb v. Sloan*, 330 F.3d 1158, 1168 (9th Cir. 2003); *Twentieth Century Fox Film Corp. v. Entm’t Distrib.*, 429 F.3d 869, 884 (9th Cir. 2005) (citing *Webb*); *Counts v. Meriwether*, 2:14-cv-00396-SVW-CW, 2016 WL 1165888, at \*6 (C.D. Cal. Mar. 9, 2016) (awarding attorneys’ fees under § 505 for defending against state-law claims because they “were based on the same allegations as the copyright infringement claim”); *Dice Corp. v. Bold Techs. Ltd.*, No. 11-CV-13578, 2014 WL 2763618, at \*21 (E.D. Mich. June 18, 2014) (allowing recovery of attorneys’ fees for federal computer access claim as “related” to copyright claim because complaint alleged defendant “gained unauthorized access to Plaintiff’s servers and software”); *Minow v. Lexus*, No. CV 06-7496 CAS (SHx), 2008 WL 11338145, at \*2 (C.D. Cal. Aug. 15, 2008) (awarding attorneys’ fees under § 505 for defending against the plaintiff’s non-copyright claims “[b]ecause these claims emanate from the same course and conduct from which plaintiff’s copyright infringement claim arose”); *Symantec Corp. v. Logical Plus, Inc.*, No. C 06-7963 SI, 2010 WL 2330388, at \*4 (N.D. Cal. June 4, 2010) (awarding attorneys’ fees under § 505 to the plaintiff for its Lanham Act claims because its “Lanham Act and Copyright claims all arose out of the same facts”). Even where Oracle, as the prevailing party, was not successful on all claims, it may recover fees for claims “related” to the successful claim. *The Traditional Cat Ass’n, Inc. v. Gilbreath*, 340 F.3d 829, 833 (9th Cir. 2003); *see also Marsu, B.V. v. Walt Disney Co.*, 185 F.3d 932, 939 (9th Cir. 1999); *Foster v. Kings Park Cent. Sch. Dist.*, 174 F.R.D. 19, 28 (E.D.N.Y. 1997) (“the fees

1 should no[t] necessarily be reduced in proportion to the amount recovered . . . the inquiry is  
2 whether the plaintiff's successful and unsuccessful claims are sufficiently related”).

3 The Court already found that “the trial was a copyright infringement case first and  
4 foremost, regardless of all other claims pled.” ECF No. 1049 at 14:11-12. But there were other  
5 claims in this case. Oracle successfully moved to dismiss Rimini’s counterclaims for copyright  
6 misuse and unfair competition (ECF No. 111) and defeated Rimini’s counterclaim for  
7 defamation on summary judgment (ECF No. 474), and Oracle either dropped before verdict or  
8 failed to prevail at trial or on appeal on its state and federal computer access, trespass to chattels,  
9 breach of contract, inducing breach of contract, and intentional interference and related state law  
10 claims. However, as discussed above in § II.B, the other claims, counterclaims, and affirmative  
11 defenses were based on a common core of facts and/or legal theories related to Oracle’s 93  
12 infringement claims, as Oracle has consistently maintained. *See, e.g.*, ECF No. 473 (Oracle’s  
13 Unopposed Motion for CMC) at 1 (“Oracle alleges copyright infringement and related claims  
14 against Rimini”).

15 Therefore, any fees related to work on these other claims is recoverable, and the Court  
16 should award attorneys’ fees to Oracle for its work in litigating all its claims based on Oracle’s  
17 complete success on each of its core copyright claims.

18 **D. The Court’s Prior Fees Award of \$28.5 Million Was**  
19 **Reasonable and Should Be Reinstated**

20 In its prior order, the Court determined that “the actual rates Oracle paid its attorneys—as  
21 established in the several declarations attached in support of Oracle’s motion—are reasonable  
22 rates for this action,” ECF No. 1049 at 19:3-5, and that “most of the time billed by counsel was  
23 reasonable for such complex litigation,” *id.* at 19:20-21. After applying a 20% reduction, the  
24 Court found that Oracle was entitled to recover \$28,502,246.40. *Id.* at 20:11-13. Based on the  
25 same facts and reasoning, the same fees award is appropriate.

26 “Reasonable attorney’s fees” are based on the “lodestar” calculation. *Gonzalez v. City of*  
27 *Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). “Under the lodestar method, the district court  
28 ‘multiplies the number of hours the prevailing party reasonably expended on the litigation by a

reasonable hourly rate.’” *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Initially, in determining the amount of fees to award in an action, the court must look to the reasonableness of the rates charged by counsel. *Resurrection Bay Conservation All. v. City of Seward Alaska*, 640 F. 3d 1087, 1095 (9th Cir. 2011). The district court then turns to whether the amount of time billed in the case was reasonable. ECF No. 1049 at 19:12. The Court’s prior findings regarding both the reasonableness of the hourly rate Oracle paid its attorneys and the reasonable amount of time billed were appropriate and should be reinstated.

### 1. The Rates Actually Paid by Oracle Were Reasonable Hourly Rates

Generally, courts determine a reasonable rate for attorneys’ fees based upon “the rates prevailing in that district for similar services by lawyers of reasonably comparable skill, experience and reputation,” irrespective of practice area. *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 445 (9th Cir. 2010). However, “the district court may, if circumstances warrant, adjust the lodestar to account for other factors which are not subsumed within it.” *Ferland v. Conrad Credit Corp.*, 224 F.3d 1145, 1149 n.4 (9th Cir. 2001). Those additional non-exclusive factors include: “(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the ‘undesirability’ of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.” *Ballen v. City of Redmond*, 466 F.3d 736, 746 (9th Cir. 2006).

The actual rates Oracle paid for its attorneys are the prevailing market rates for this type of litigation. “Unless counsel is working outside his or her normal area of practice, evidence that a billing rate was the usual rate the attorney charges for his or her services is evidence that the rate is comparable to the market rate.” *Perfect 10, Inc. v. Giganews, Inc.*, No. 11-07098, 2015 WL 1746484, \*5 (C.D. Cal. Mar. 25, 2015) (citing *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 840 (9th Cir. 1982)). “Billing rates usually reflect, in at least a general way, counsel’s



1 reputation and status (i.e., as partner, associate, or law clerk).” *Moore*, 682 F.2d at 840; *accord*  
 2 *Kourtis v. Cameron*, 358 Fed.App’x. 863, 868 (9th Cir. 2009) (“The district court’s calculation of  
 3 an attorney’s fee award . . . based on the actual rates charged by [prevailing party’s] attorneys  
 4 was reasonable under 17 U.S.C. § 505.”); *see also Dillard v. City of Greensboro*, 213 F.3d 1347,  
 5 1354-55 (11th Cir. 2000) (“What [the attorney] charges clients is powerful, and perhaps the best  
 6 evidence of his market rate; that is most likely to be what he is paid ‘as determined by supply  
 7 and demand.’”); *National Assoc. of Concerned Veterans v. Secretary of Def.*, 675 F.2d 1319,  
 8 1325 (D.C.Cir.1982) (“The best evidence would be the hourly rate customarily charged by the  
 9 affiant himself or by his law firm.”). “In an action under the Copyright Act, an award based on  
 10 the actual rates charged by counsel has consistently been held to be reasonable under 17 U.S.C.  
 11 § 505.” ECF No. 1049 at 18:22-25 (citing *Kourtis*, 358 Fed. App’x. at 868). In complex  
 12 litigation, “the parties can reasonably be expected to retain nationally respected law firms and  
 13 nationally respected attorneys to pursue their interest in the litigation,” which will result in  
 14 “higher lodestars than normally seen in this district.” *Pacquiao v. Mayweather*, 2012 WL  
 15 4092684, at \*2 (D. Nev. 2012) (finding actual rates paid to California attorneys were  
 16 “reasonable” and awarding them).

17 Here, Oracle hired Morgan Lewis & Bockius LLP<sup>3</sup> and Boies Schiller Flexner LLP  
 18 (“BSF”) to prosecute this case. The firms charged Oracle rates in line with their usual rates, or  
 19 lower, based on their normal areas of practice, and Oracle paid those rates. ECF No.  
 20 923 ¶¶ 8-10; ECF No. 924 ¶¶ 8-10. The reasonableness of MLB’s and BSF’s rates is confirmed  
 21 by Oracle’s decision to pay them. Oracle is a sophisticated consumer of legal services and will  
 22 only pay rates that are commensurate with the skill Oracle required. ECF No. 925 ¶¶ 2-4. They  
 23 are similar to the rates that other clients pay BSF and MLB and are thus evidence of the market  
 24 rate for their services. ECF No. 923 ¶ 9; ECF No. 924 ¶ 9.

25  
 26  
 27 <sup>3</sup> The team of MLB attorneys working on the case were formerly at Bingham McCutchen LLP  
 28 until November 2014, when they joined Morgan Lewis & Bockius. ECF No. 923 ¶ 2 4. Prior to  
 November 2014, Bingham McCutchen LLP represented Oracle in this matter. *Id.* Bingham  
 McCutchen and Morgan, Lewis & Bockius will be referred to collectively herein as “MLB.”

1           The rates Oracle paid for MLB and BSF are consistent with the prevailing rates in the  
 2 community for this type of complex litigation. ECF No. 921. ¶¶ 2, 4; ECF No. 923 ¶¶ 30-60;  
 3 ECF No. 924 ¶¶ 18, 14-31 (detailing the skills, experience, and rates for MLB and BSF  
 4 attorneys). All of their rates are reasonable and consistent with the prevailing market for their  
 5 services on complex copyright litigation in this district.

6           The reasonableness of the actual rates Oracle paid for MLB and BSF is confirmed by  
 7 both parties' decision to hire national law firms with teams that were not based in Las Vegas.  
 8 The MLB and BSF attorneys who worked on this case are primarily located in Las Vegas, San  
 9 Francisco, Oakland, and Washington, D.C. ECF No. 923, Ex. 27. Likewise, Rimini and Ravin  
 10 hired the national law firms of Shook, Hardy & Bacon LLP and Gibson Dunn & Crutcher LLP,  
 11 with lawyers based in San Francisco, Kansas City, Houston, Los Angeles, and Washington, D.C.  
 12 *Id.* Both parties' decisions reflect that the market for legal services is national, and that both  
 13 parties believed only nationally-renowned firms could handle the case properly. ECF No. 921  
 14 ¶ 4; *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) ("[R]ates outside the  
 15 forum may be used if local counsel was unavailable, either because they are unwilling or unable  
 16 to perform because they lack the degree of experience, expertise, or specialization required to  
 17 handle properly the case."); *Louisville Black Police Officers Org., Inc. v. City of Louisville*, 700  
 18 F.2d 268, 278 (6th Cir. 1983) ("District courts are free to look to a national market, an area of  
 19 specialization market or any other market they believe appropriate to fairly compensate  
 20 particular attorneys in individual cases."). Although most of the MLB and BSF attorneys are  
 21 located outside Las Vegas, their rates reflect the value of their services throughout the country in  
 22 any district. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. County of Albany & Albany*  
 23 *Cnty. Bd. of Elections*, 522 F.3d 182, 192 (2d Cir. 2008) ("The legal communities of today are  
 24 increasingly interconnected. To define markets simply by geography is too simplistic.");  
 25 *compare* ECF No. 923 ¶¶ 30-60 (detailing the skills, experience, and rates for MLB and BSF  
 26 attorneys); ECF No. 924 ¶¶ 14-31 (same) *with* ECF No. 923, Ex. 26 (excerpt of 2014 National  
 27 Law Journal survey detailing prevailing national market rates).  
 28



Both MLB and BSF are national firms with a reputation of having top-tier litigators. The Court recognized the professionalism and value brought by both parties' attorneys, telling the jury that it had "seen professionalism at the top of the ladder." Tr. 3949:1-9. The attorneys' "performance, from a professional standpoint, [was] one that's just totally praiseworthy." Tr. 3950:15-19. "[W]e had some outstanding lawyers and outstanding technical support." Tr. 3951:1-2. And this was not a simple case: multiple copyrights and claims were at issue, the parties filed over 45 motions, engaged in intense and voluminous discovery, and ultimately went through a four-and-a-half week trial after which the jury was provided with a 14-page verdict form,<sup>4</sup> and 75 pages of jury instructions (that were the result of hundreds of pages of briefing).<sup>5</sup> ECF No. 923 ¶¶ 25-26; ECF Nos. 880, 896. As the Court said, "this has been a very, very complex case . . . . I've never seen a case this complex that involved this many issues before a jury as what you've seen here and before the Court. . . . *[I]t is certainly what you call a mega trial and a mega lawsuit under any view.*" Tr. 3946:7-18 (emphasis supplied).<sup>6</sup>

This type of case "justified top-tier litigators." *Compare Perfect 10*, 2015 WL 1746484 at \*\*19-20 ("With more than 30 motions . . . voluminous discovery (and seemingly endless discovery disputes), nearly 700 docket entries, and more than 38,000 pages in the Court's docket, there is little doubt that this case was precisely the sort of complex, large, and burdensome case that justified top-tier litigators" and was not a "straightforward copyright case"); *with* ECF No. 923 ¶¶ 24-28 (over 45 motions, 900 docket entries, and voluminous and contentious discovery); *see also Rubbermaid Commercial Products, LLC v. Trust Commercial Products*, No. 2:13-cv-02144, 2014 WL 4987878, at \*8 (D. Nev. Aug. 22, 2014) *report and recommendation adopted*, 2014 WL 4987881 (D. Nev. Oct. 6, 2014) (awarding actual rates of Squire Patton Boggs, LLP of \$624.75 to \$225.25 per hour for non-resident attorneys in light of "the experience and training of the attorneys . . . and the complexity of the subject-matter involved in this [patent] action"). As

<sup>4</sup> The Court acknowledged that a verdict form of this complexity "is virtually unheard of in our civil trials and our criminal trials." Tr. 3946:21-22.

<sup>5</sup> With respect to Oracle's summary judgment motions alone, the Court noted that "[t]his is a complex case with briefing upon summary judgment motions of approximately 200 pages, with over 2,700 pages of exhibits." ECF No. 474 at 28.

<sup>6</sup> *See also* Tr. 898:11-17, 1901:20-1902:2, 1986:11-16, 1988:5-13, 2732:15-19, 3168:19-25, 3348:14-16, 3361:19-3362:11.

1 in *Perfect 10*, because this case “involv[ed] multiple claims against multiple parties, novel issues  
 2 of law, and millions of dollars in potential damages,” it justified a “nationally-renowned law firm  
 3 – with relatively high hourly rates.” *Id.* Paying relatively higher rates for MLB and BSF was  
 4 “all the more reasonable” given that MLB and BSF had already successfully represented Oracle  
 5 in a “similar action[]” against TomorrowNow, Ravin’s former company. 2015 WL 1746484 at  
 6 \*\*19-20; § II.C, above.

7 Based on these considerations, the Court has already concluded that the actual rates  
 8 Oracle paid its attorneys were reasonable rates. ECF No. 1049 at 18:18-19:11.

## 9 2. The Amount of Time Billed on This Case Was Reasonable

10 “[T]o determine whether attorneys for the prevailing party could have reasonably billed  
 11 the hours they claim to their private clients, the district court should begin with the billing  
 12 records the prevailing party has submitted.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202  
 13 (9th Cir. 2013).

14 “Admittedly, a multi-million dollar attorneys’ fee request is objectively large. But a fee  
 15 award is not unreasonable simply because it involves a lot of money. The operative question  
 16 isn’t the dollar amount, the question is whether the rates charged and the hours spent are  
 17 reasonable in light of the totality of the litigation. Courts in this [circuit] have awarded  
 18 attorneys’ fees in excess of \$100,000,000 in copyright litigation depending on the nature of the  
 19 underlying litigation, and reference to the dollar amount of a particular fee award is not  
 20 especially helpful without a sense of how much time it took to reasonably litigate the case.”  
 21 *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098, 2015 WL 1746484, at \*27 (C.D. Cal. Mar.  
 22 24, 2015) (citing *Mattel, Inc. v. MGA Entm’t, Inc.*, No. 04–9049, 2011 WL 3420603, at \*10  
 23 (C.D. Cal. Aug. 4, 2011) *aff’d sub nom. Mattel, Inc v. MGA Entm’t, Inc.*, 705 F.3d 1108 (9th Cir.  
 24 2013) (awarding attorneys’ fees of \$105,688,073.00 to prevailing copyright defendant)).

25 Oracle previously presented evidence that its attorneys’ billing records reflect a  
 26 reasonable amount of time spent on this litigation. ECF No. 923 ¶ 15; ECF No. 924 ¶ 12. The  
 27 amount of time billed in Oracle’s litigation against SAP and TomorrowNow also confirms the  
 28 reasonableness of Oracle’s attorneys’ fees in this case. In the *SAP TomorrowNow* case, which

1 addressed strikingly similar allegations against a similar business model that, like Rimini, was  
 2 designed by Seth Ravin, SAP TomorrowNow agreed to pay Oracle \$120 million in total  
 3 attorneys' fees and costs. *See* ECF No. 923, Ex. 22 (*Oracle USA, Inc. v. SAP AG*, N.D. Cal.  
 4 Case No. 07-CV-1658 (May 21, 2009), ECF No. 961); *id.*, Ex. 28 (*Oracle USA, Inc. v. SAP AG*,  
 5 N.D. Cal. Case No. 07-CV-1658 (August 5, 2010), ECF No. 745, Undisputed Fact 93 (describing  
 6 allegations against TomorrowNow and its 358 customers)); § II.C, above.

7 Finally, Oracle also made conservative adjustments to the hours actually spent. [REDACTED]  
 8 [REDACTED]. ECF No. 923 ¶ 6; ECF No. 924 ¶ 6.  
 9 Also, for time entries that were block-billed, Oracle conservatively struck out the entire time  
 10 spent by a timekeeper for any given day where Oracle has redacted the description of the work  
 11 done due to privilege or other reasons. ECF No. 923 ¶ 7; ECF No. 924 ¶ 7. Oracle removed  
 12 over \$5 million from its bills for these reasons.

13 Based on these considerations, and taking into account "some inconsistencies that violate  
 14 regular billing practices and guidelines, such as improper block billing entries," the Court found  
 15 it reasonable to apply a blanket reduction of 20% to Oracle's requested attorneys' fees of  
 16 \$35,627,807.99 and awarded Oracle \$28,502,246.40 in attorneys' fees. ECF No. 1049 at 20:5-7.  
 17 Oracle does not seek to relitigate that 20% reduction. Based on those same considerations, the  
 18 Court should reinstate the same attorneys' fees award.

#### 19 **IV. CONCLUSION**

20 For the reasons stated above, the Court should award Oracle \$28,502,246.40 in attorneys'  
 21 fees.

22  
 23 DATED: March 26, 2018

Morgan, Lewis & Bockius LLP

24  
 25 By: /s/ Thomas Hixson  
 26 Thomas Hixson  
 27 Attorneys for Plaintiffs  
 28 Oracle USA, Inc.,  
 Oracle America, Inc. and  
 Oracle International Corporation

**CERTIFICATE OF SERVICE**

I certify that on March 26, 2018, I electronically transmitted the foregoing ORACLE'S  
RENEWED MOTION FOR ATTORNEYS' FEES to the Clerk's Office using the Electronic  
Filing System pursuant to Special Order No. 109.

Dated: March 26, 2018

Morgan, Lewis & Bockius LLP

By:                     /s/ Thomas Hixson                      
Thomas Hixson

Attorneys for Plaintiffs  
Oracle USA, Inc.,  
Oracle America, Inc. and  
Oracle International Corporation